

Corruption °C

***Paper Series on Corruption
and Anticorruption Policy***

***The
Perpetual
Battle:
Corruption in the
Former Soviet Union
and the
New EU Members***

Christopher Walker

No. 12, 2011

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The Perpetual Battle

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Summary

This article provides an overview of a number of key issues related to corruption that confront the countries of the former Soviet Union and the new members of the European Union. Findings from *Nations in Transit*, Freedom House's annual assessment of democratic development in the region, suggest that despite the passage of two decades since the collapse of the Soviet system, the non-Baltic former Soviet Union remains mired in institutionalized graft. Meanwhile, the new EU member states face their own persistent challenges as they struggle to combat political corruption.

About the Author

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The Perpetual Battle:

Corruption in the Former Soviet Union and the New EU Members

1. Non-Baltic Former Soviet Union: Integration of Corruption and Authoritarian Rule

The highly publicized cases of Sergei Magnitsky, a 37-year-old lawyer who died in pretrial detention in November 2009 after exposing a multimillion-dollar fraud against the Russian taxpayer, and Mikhail Khodorkovsky, the jailed business magnate and regime critic who was sentenced at the end of 2010 to remain in prison through 2017, put an international spotlight on the Russian state's contempt for the rule of law. By the time of his death, Magnitsky had been complaining for weeks that he was being denied adequate medical treatment. The subsequent inquiry was laden with obfuscation and represented a serious miscarriage of justice. Khodorkovsky's latest case gained notoriety for the brazenly irregular manner in which he was charged and convicted of embezzling his own company's oil, apparently with the predetermined goal of keeping him behind bars at all costs.

In one sense, these were simply the latest in a long list of cases involving independent-minded Russians who ran afoul of powerful interests and were subsequently silenced. But there was more at work here than mere lawlessness. More than a decade into the repressive governance model established by Vladimir

Putin, these two tragic episodes reveal the extent to which Russia's entire institutional apparatus – including the judiciary, law enforcement agencies, security services, and the tamed news media – now conspires blatantly in the use of the law as an instrument of state-led corruption. By silencing influential and accomplished figures such as Khodorkovsky and Magnitsky, the Russian authorities have made it abundantly clear that anyone in Russia can be silenced.

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The cases are in part products of the Soviet legacy, which includes a dominant, executive, resilient, extralegal network, and an opaque decision-

making process.¹ However, they also contain features forged by the new Russian leadership in an environment with far more economic openness and international integration than during the Soviet period. It is notable that the money at stake in both affairs was tied to trade with and investment from the democratic world. These two cases were unusual in the degree to which they have attracted international attention. However, they may represent only the tip of the iceberg of similar cases in the Russian system that do not receive such publicity.

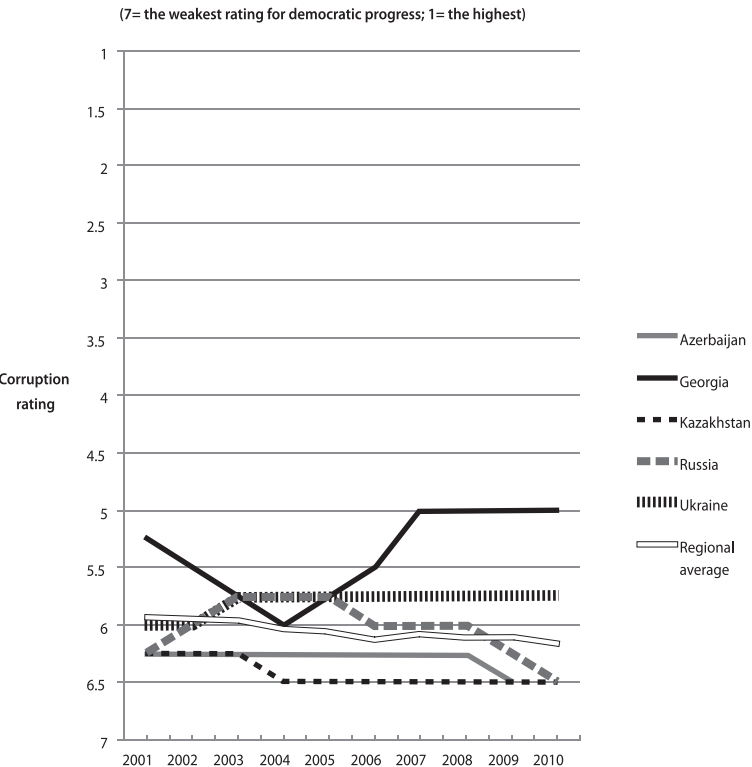
Russia's experience in this respect is not unlike those of its neighbors, which have also combined authoritarian governance and new sources of wealth to produce wholesale corruption. The findings of *Nations in Transit 2010*, the most recent edition of Freedom House's annual analysis of democratic institutions in the formerly communist countries of Europe and Eurasia, illustrate this pattern. Of the 12 non-Baltic former Soviet republics, nine achieve a score of 6 or worse on corruption, with 7 as the worst possible score. From Belarus to Tajikistan, institutionalized venality is the norm rather than the exception.

Graft has flourished in these countries, as in Russia, because the very mechanisms that are essential for combating the problem have been bent to support it instead. One potential anticorruption tool, a free press, is seen by the Soviet-trained authoritarian leaders of the region as a threat rather than a boon, and they have made control of the media sector a core feature of government strategy. In the most repressive regimes, constriction of the flow of information has blocked the release of societal pressures and allowed serious problems to fester, threatening long-term stability. It has also shrunk the space for discussion of policy options that could meet the complex development challenges all of these countries confront.

The Kremlin's control of television, for example, is integral to this strategy of control. For political and public affairs issues, the three main television outlets – Channel One, NTV, and RTR – calibrate coverage and omit what is deemed politically undesirable. Intimate coordination between the Kremlin and politically dependable editorial leadership at the stations ensures that unwanted topics never make it to the airwaves. At present, virtually all of the consolidated authoritarian states of the former Soviet Union exert similar management over national broadcast media, from which most ordinary citizens obtain news and information.

¹ Coulloudon, V. *Putin's Russia: A Confusing Notion of Corruption*. Working Paper Series on Russia and the Former Soviet States, The Liechtenstein Institute on Self-Determination (LISD) at Princeton University's Woodrow Wilson School of Public and International Affairs, August 2003.

Graph 1.
Corruption scores for selected non-Baltic ex-USSR countries since
Nations in Transit 2001



Generalized property rights, the sanctity of contracts, and other free-market principles are similarly frowned upon in settings where all strategic economic assets are divided among the leader’s family members or associates. In countries like Kazakhstan, Azerbaijan, and Uzbekistan, major business activity of any kind tends to be off limits to those who are not prepared to give a sufficient financial tribute to the leadership. This approach nevertheless reflects a major change from the Soviet period. The authoritarian rulers of the 21st century have come to understand that allowing a degree of private enterprise and commercial opportunity both extends the patience of the public and expands the opportunities for graft and personal enrichment.

The leadership's economic dominance is maintained in part through the manipulation of docile courts, a consistent theme in the *Nations in Transit* analyses of consolidated authoritarian states. Rather than functioning as an independent institution that upholds the rule of law, the judiciary serves the executive authorities by enabling purges of political opponents and rewarding regime loyalists. In cases like those of Khodorkovsky and Magnitsky, the legal system has not only apparently facilitated the theft of private assets by state agents, it has also protected the thieves by locking up the victims.

Conditions are worst in countries where voters have no meaningful opportunity to hold their leaders accountable at the polls. But even states like Ukraine, Georgia, and Moldova, which have set themselves apart from their former Soviet neighbors by virtue of comparatively open media landscapes, civil society sectors, and electoral systems, are still struggling with the arduous judicial and other reforms needed to make real progress against corruption. Furthermore, the democratic advances that have already taken place remain quite fragile, and recent years have brought a number of setbacks and disappointments. Recent developments in Ukraine, where encroachments on the courts, media and civil society have grown, are of particular concern.

It is noteworthy that these three countries lack the abundant energy resources of Russia, Azerbaijan, Kazakhstan, and other autocratic states. Indeed, the most thoroughly corrupt and authoritarian regimes appear to be those with a ready supply of external funding, whether from oil and gas sales, or Russian subsidies. Such infusions of cash have the effect of sustaining the leadership's patronage networks, the security and censorship apparatus, and the appearance of good economic stewardship.

Russia's efforts to influence nearby countries through subsidies and state-led investment have increasingly threatened the democratic development of the new and aspiring European Union (EU) member states, which remain vulnerable due to their shared postcommunist legacy of informal networks of corruption and organized criminal activity. In the Czech Republic, for instance, Russia has used opaque business practices to build up a significant stake in a number of strategic sectors, including nuclear energy. This activity has prompted accusations that the country is "exporting corruption."²

² Feifer, G., Whitmore, B. *Czech Power Games: How Russia is Rebuilding Influence in the Former Soviet Bloc*. Radio Free Europe/Radio Liberty, 25 September 2010. <http://tiny.cc/4d3qp> Last accessed on 4 February 2011.

The record of the past two decades demonstrates that economic opening without political reform simply feeds kleptocratic authoritarian institutions, giving rulers the wherewithal not only to tighten their grip on their own populations, but also to extend their corrupting influence across international borders.

2. New EU States: Glass Half Full or Half Empty?

Although they are largely free from the overarching, systemic corruption that prevails in the former Soviet Union, the new EU member states are struggling to meet high democratic standards of transparency and probity while saddled with immature or incompletely reformed institutions. On average, the new EU states receive a score of 3.33 on corruption in the most recent *Nations in Transit* findings, far better than the average of 6.17 received by the non-Baltic former Soviet states. Nevertheless, of the seven indicators measured by the survey,³ corruption is the one on which the new EU states score the worst. The overall democracy average for these countries is 2.44.

The group includes a diverse range of performers. Estonia and Slovenia are the leaders, with overall democracy scores of 1.96 and 1.93, respectively. At the other end of the spectrum are Bulgaria and Romania, the most recent additions to the EU, which hold democracy scores of 3.04 and 3.46 after experiencing slight declines over the past five years. Of all the new EU states, Slovakia has undergone the most significant negative change in that period.

A successful push to improve democratic accountability has contributed to systems that are demonstrably different from those to the east. Most new EU states have developed relatively strong news media and civil societies, both of which are essential checks on corruption. Journalists cover public policy issues and often expose graft and conflicts of interest, even at high levels. Similarly, nongovernmental organizations are able to analyze state performance, uncover malfeasance, and make their case to the public.

The impact of a free press and civil society was on display, for instance, during the Czech Republic's 2010 general election campaign, in which

³ The seven indicators are Electoral Process, Civil Society, Independent Media, National Democratic Governance, Local Democratic Governance, Judicial Framework and Independence, and Corruption.

corruption was a central issue. Domestic and international organizations, including the American Chamber of Commerce, undertook initiatives that put anticorruption measures at the top of the agenda. Czech news media, meanwhile, reported aggressively on the topic.

Graph 2.
Corruption scores for selected new EU member states since
Nations in Transit 2001



Corruption has persisted in the region, despite the improved environments for the media and civil society, due in large part to stubborn problems with the judiciary. For instance, much of the five-year decline in Slovakia's *Nations in Transit* democracy score can be attributed to the erosion of its score on the judiciary indicator. While a number of new EU states have made modest progress on judicial reforms over the past decade, cases of

alleged corruption by senior officials, once exposed, rarely end with guilty verdicts and meaningful punishments. Some cases seem never to end at all, winding their way through the courts for years without resolution. In Latvia, for instance, two major cases of alleged corruption linger in the court of first instance since 2007 and 2008, respectively. One case concerns an affair relating to the introduction of digital broadcasting in Latvia allegedly involving a prominent oligarch, Andris Šķēle; the other involves Aivars Lembergs, another major oligarch who has been charged with bribery, money laundering and other offenses. An appeal is also still pending in administrative cases where the People's Party was fined approximately 2 million USD and LPP/LC, a party formed by the merger of several parties in recent years, approximately 1 million USD for campaign overspending in the 2006 election cycle.

Corruption has persisted in the new EU member states despite the improved environments for the media and civil society, due in large part to stubborn problems with the judiciary.

Long-serving judges who retain old habits of venality, equivocation, or deference to the political establishment may contribute to this phenomenon, and there is reason to hope that a younger generation of jurists may prove more effective. The Special Administrative Court in Brno (the Czech Republic), which came into being in 2003, is one example of an influential judicial body with a younger profile that is gradually earning the respect of legal observers.

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But the failure to launch and complete high-profile corruption prosecutions also stems from a lack of political will on the part of elected officials and ruling parties. In Slovakia, clientelism remains an entrenched problem, as does the gap between good laws and weak implementation. In August 2010, Jan Hrivnak of Slovakia's Special Prosecution Office observed that "solving corruption is a bigger problem than any other form of crime... and what is needed is political support to address this issue. As long as public figures do not take the fight against corruption as a real challenge, it will be futile."⁴

In the Czech Republic, the sound legal framework is insufficient without a concomitant change in the complex web of relationships between political and business elites, a problem shared by many countries in the region.

⁴ *We Need Qualified People with Moral Integrity*. Targeted News Service, Prague, 2 August 2010.

Major business deals involving the state often lack transparency, and the Czech Supreme Audit Office (NKU) has uncovered irregularities that politicians routinely ignore.⁵

The influence of these corrupt networks could grow in the coming years, as poor economic conditions have weakened the checks provided by news media and other institutions in some new EU states. One such country is Latvia.

All three Baltic states have made remarkable progress since regaining their independence, successfully reversing the effects of decades of Soviet governance and earning admission to NATO and the EU. Latvia, for its part, enjoyed exceptional economic growth during the middle part of the last decade, and over time managed a number of complex policy issues, including slowly making headway on the integration of its significant ethnic Russian minority.

In recent years, however, doubts have emerged about the durability of Latvia's development. The global financial crisis exposed the precarious nature of the country's economic system. Poor fiscal management and a real-estate bubble were among the ticking time bombs that went off when the economy faltered. While the political system was able to absorb these near-catastrophic blows, it is now especially vulnerable to a reassertion of influence by a small group of economic oligarchs. The vulnerability of the financially struggling news media is of critical concern.

The government's austerity measures and proposed restructuring of the public television and radio broadcasters could affect their quality and independence, and the ownership of major private news outlets remains opaque. In 2009, the national daily *Diena* was sold at the time to unidentified owners, and there was evidence in 2010 that the paper's editorial line had been affected. The non-transparent ownership transfer of *Diena* has had the effect of lowering a voice that regularly spoke on public policy issues at a time precisely when more rather than less discussion of public affairs is needed in Latvia.

In broader terms, with economic and fiscal troubles that could last for several years, all of the new EU member states will be hard pressed to protect their past democratic gains against corruption-fueled backsliding.

⁵ *Nations in Transit 2010*. New York: Freedom House, 2010.

3. A Borderless Challenge

While the new members of the EU have come a long way from their communist past and benefit from the normative influence of the bloc as a whole, now is no time for complacency. Another source of influence lies just to the east in the non-Baltic former Soviet Union, where corruption has become the lynchpin of volatile autocratic regimes, and the two regions are increasingly integrated with respect to both legal and illegal economic activity. If the EU is to defend its weakest members and promote democratic principles beyond its borders, it and its allies must make eradicating corruption a top priority. This strategic objective is most expediently achieved through support for the highly responsive institutions of civil society and a free press, both of which are now in danger.

Civil society activists are under great pressure across most of the former Soviet Union, and as long as authoritarian governments are able to hinder their work, meaningful headway on corruption is all but impossible. In the 2009 calendar year, covered by *Nations in Transit 2010*, fewer civil society groups were willing to participate in public life in Kyrgyzstan, virtually no activists contested the results of the country's fraudulent elections, and many fled abroad prior to the voting.⁶ In Kazakhstan, human rights activist Evgeny Zhovtis was sentenced to four years in prison for vehicular manslaughter in a trial that was plagued by procedural violations.⁷ Many governments in the region, including those of Kazakhstan, Russia and Belarus, continued to severely limit space for meaningful civil society activity.

Score declines in *Nations in Transit's* independent media category were the most numerous in the most recent edition and appeared in every sub-region. Kyrgyzstan experienced a wave of attacks against independent journalists and a decrease in the ability of news outlets to criticize government policies. Kazakhstan failed to liberalize its media law in keeping with its commitments to the Organization for Security and Cooperation in Europe (OSCE), and the use of libel suits to punish investigative journalists continued to mar the country's record on press freedom. Russia remains one of the most dangerous countries in the world for journalists and the Russian authorities continue to use mass media as an instrument for promoting regime interests rather than to inform the country's citizenry and improve public policy. Disturbingly, erosion was also evident on media

⁶ Marat, E. *Kyrgyzstan in Nations in Transit 2010*. New York: Freedom House, 2010.

⁷ Dave, B. *Kazakhstan in Nations in Transit 2010*. New York: Freedom House, 2010.

performance in five new EU member states. Through a combination of ill-advised laws, shaky media ownership transparency, and pressures on editorial independence, seven out of 10 new EU members have seen their media score fall over the past five years.⁸ Hungary's controversial media law represents one extreme example of the pattern within Central Europe. The new law among other things requires news organizations to register with a council appointed by the Hungarian Parliament, where Victor Orban, the country's prime minister, enjoys a dominant majority. Under the law's provisions, Hungarian news outlets are required to respect "human dignity" and observe balanced reporting. Fines can be imposed for a breach of the rules.

Too often, policymakers in the transatlantic community fall prey to the false choice between advancing democratic rights and good governance on the one hand, and pursuing economic or security cooperation with corrupt regimes on the other.

The EU and its democratic partners, especially the United States, are fully capable of addressing these problems, both by strengthening the domestic institutions of the new democracies and by showing more resolve in their policies toward countries like Russia, Kazakhstan, and Azerbaijan. Too often, policymakers in the transatlantic community fall prey to the false choice

between advancing democratic rights and good governance on the one hand, and pursuing economic or security cooperation with corrupt regimes on the other. Western officials should bear in mind that the appetite grows with eating. The more the authoritarian leadership in the region is plied with unearned diplomatic, trade, and human rights concessions, the more it will demand in the future, threatening the integrity of even established democracies and casting doubt on long-term peace and prosperity.

The injustice of the Magnitsky affair in Russia has been sufficient to spur a number of key representatives in the U.S. Congress to take the unusual step of proposing to freeze assets and block visas of Russian officials who participated in this subversion of justice.⁹ Officials in Europe have likewise

⁸ These include: Bulgaria, the Czech Republic, Hungary, Latvia, Poland, Slovakia, and Slovenia.

⁹ Provisions of the *Justice for Sergei Magnitsky Act of 2010* include visa bans to the US for classes of individuals who participated in the Magnitsky case and related financial sanctions. S. 3881: *Justice for Sergei Magnitsky Act of 2010*, introduced to US Senate on 29 September 2010. <http://tiny.cc/az5qx> Last accessed on 4 February 2011.

seen fit to consider similar action. On 23 November 2010, the European Parliament International Affairs Committee unanimously approved a motion for sanctions to be imposed upon Russian officials deemed to be responsible for the prison death of Magnitsky. The parliament's proposed sanctions include a ban on travel to the European Union and the seizure of property abroad for anyone considered by Magnitsky's former colleagues to be connected with his death.

Just as the EU seeks to enforce its own standards in the new member states, all democratic governments must redouble their efforts to uphold the rules they have built into international organizations – ranging from the Group of Eight to the OSCE, the Council of Europe, and the World Trade Organization – in the face of malingering and defiance by authoritarian regimes. At a fundamental level, this is a test of political will to see whose preferences, those of the non-transparent authoritarian states or the rules-based European democracies, will prevail.

To be sure, this would require vigorous diplomacy and a degree of coordination among democracies that has not been in evidence to date. Some might question whether they can afford to take this approach, but in the long run they cannot afford to do otherwise. The authoritarian states of the former Soviet Union have demonstrated impressive will in pursuing their preferences and interests. The notion that the EU border will function passively as a sort of firewall against the corrosive influence of these regimes is a dangerous illusion.

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